

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

FILED - CLERK  
U.S. DISTRICT COURT  
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TX EASTERN - BEAUMONT

NASSER ASSED §  
VS. § CIVIL ACTION NO. 1:02cv711  
JOHN TOMBONE §

BY 7C

MEMORANDUM ORDER SUSTAINING MOVANT'S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Movant Nasser Assed, an inmate at the Federal Correctional Complex in Beaumont, Texas, proceeding pro se, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255.

The court heretofore referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends petitioner's petition be granted and petitioner's conviction under Count Two of the indictment be vacated. Additionally, the magistrate judge recommended that petitioner's case should be remanded to the United States District Court for the Western District of Texas for resentencing.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a de novo review of the

objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b). After careful consideration, the court concludes petitioner's objections are meritorious.

Petitioner's objects to resentencing, asserting that he was sentenced to the maximum allowed under Count One. The respondent was ordered to file a response to petitioner's objections. In his response, the respondent concedes that petitioner did, in fact, receive the maximum sentence allowed for his remaining conviction. Thus, the respondent concedes that resentencing is unnecessary. Accordingly, petitioner's objections should be sustained.

O R D E R

Accordingly, petitioner's objections are **SUSTAINED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED** with the exception of resentencing. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 4<sup>th</sup> day of August, 2005.

  
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HOWELL COBB  
UNITED STATES DISTRICT JUDGE